

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Facilitating the Provision of Spectrum-)	WT Docket No. 02-381
Based Services to Rural Areas and)	
Promoting opportunities for Rural)	
Telephone Companies to Provide)	
Spectrum-Based Services)	

**Reply Comments Of:
Fred Williamson and Associates, Inc. ("FW&A")
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC**

BACKGROUND AND SUMMARY

FW&A is a consulting firm located in Tulsa, Oklahoma that represents small rural Incumbent Local Exchange Carriers (ILECs) that operate in Kansas and Oklahoma. The ILECs represented by FW&A have deployed and continue to deploy facilities that provide universally available services with access to basic and advanced services at rate levels that are comparable to rates in urban areas. The customer density in these rural ILEC areas is less than five customers per square mile. Competition is faced by these ILECs from a number of wireless carriers, including Western Wireless.¹ FW&A and the ILECs have a direct interest in this proceeding because Western Wireless has been granted Eligible Telecommunications Carrier (ETC) status and universal service funding in a number of their service areas based on flawed rationale and asymmetric standards that Western Wireless is advocating in its comments in this Docket. ETC status granted on this basis is at odds with the provisions of the Act and is not in the public interest.

In its comments in this proceeding, Western Wireless claims erroneously that:

- Wireless competition in rural areas is nascent or emerging.²
- The Commission's central responsibility is to promote consumers' access to wireless service in rural areas.³
- The principal obstacles that inhibit a wireless carriers ability to provide service in rural areas are (1) The high cost of serving rural areas and (2) Barriers to entry

¹ See comments of FW&A in WT Docket No. 02-379, filed January 27, 2003.

² Comments of Western Wireless, page 1.

³ Id., pages 1, 8 to 13.

posed by the difficulties in obtaining the same universal service funding that is received by rural Local Exchange Carriers (LECs).⁴

These assertions are plain wrong. Western Wireless miss-portrays the status of competitive wireless entry in rural areas, distorts the requirements of the Act and provides no factual basis for its claims about high costs or barriers to entry.

**A NUMBER OF WIRELESS PROVIDERS NOW PROVIDE SERVICE IN RURAL
AREAS**

In its comments, Western Wireless infers wrongly that wireless service in rural areas is nascent and is impeded because of alleged barriers to entry.⁵ This inference is simply wrong. In its comments in WT Docket No. 02-379, FW&A demonstrated that there is substantive wireless competition in each of the low-density exchanges in which the ILECs it represents provide service.

“All of the rural areas for the Kansas and Oklahoma ILECs represented by FW&A are currently served by multiple CMRS providers. In Oklahoma, on the average, there are five wireless carriers providing service in Chouteau’s exchanges, two wireless carriers providing service in Pine’s exchanges and four wireless carriers providing service in Totah’s exchanges. In Kansas, on the average, there are three wireless carriers providing service in H&B’s exchanges, five wireless carriers providing service in Moundridge’s exchanges, over two wireless carriers providing service in Pioneer’s exchanges, three wireless carriers providing service in

⁴ Id., pages 1, 13 to 29.

⁵ These alleged barriers to entry are (a) Purported high costs of rural wireless service, (b) Requirements to maintain quality services at reasonable rate levels, (c) Provide facilities to serve all consumers, (d) Provide equal access to long distance providers, etc.

Totalah's exchanges and two wireless carriers providing service in Twin Valley's exchanges."⁶

This information tracks well with Commission data regarding the number of wireless providers serving rural America. Western Wireless' assertions regarding barriers to entry are apparently not deterring or impeding either large or small wireless competitors from serving low-density rural LEC areas.

THE COMMISSION'S RESPONSIBILITY UNDER THE ACT IS TO PROMOTE THE PUBLIC INTEREST, NOT THE INTERESTS OF WESTERN WIRELESS

(A) The Commission should adopt changes to allow rural carriers with access to spectrum and to insure reasonable interconnection with other wireless providers.

Western Wireless argues that under the Commission's statutory goals and established public interest objectives, its responsibility is to promote the availability of wireless service to rural consumers. FW&A agrees with Western Wireless to the extent that the Commission must apply provisions of the Act that facilitates participation by small businesses, minority and women owned businesses and rural telcos.⁷ In fact, as discussed by the National Telecommunications Cooperative Association (NTCA) and the Organization for the Protection and Advancement of Small Telecommunications Companies (OPASTCO), the following changes are necessary by the Commission to implement this provision of the Act:

⁶ Comments of FW&A, WT Docket No. 02-379, filed January 27, 2003, page 3. See Attachments 1 to 4 of that filing for specific information regarding wireless providers and service coverage. See also the comments of the National Telecommunications Cooperative Association (NTCA) and Dobson in WT Docket No. 02-379, filed January 27, 2003. Those comments also discussed the substantive wireless competition that now exists in rural LEC areas.

⁷ Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (Act), Section 309(j)(3) and (4).

- Spectrum should be licensed to smaller geographic areas.⁸
- Non-discriminatory roaming arrangements should be established.⁹

These changes will facilitate the ability of small regional wireless carriers, some of whom are affiliates of rural LECs, to bring further effective and efficient competition to rural areas served by large national wireless providers.

(B) The Commission(s)¹⁰ have no statutory requirement to promote the interests of Western Wireless through universal service support if such support is at odds with the public interest. The Commission(s) do, however have a statutory obligation to examine the public interest before ETC status is granted in rural LEC areas.

Western Wireless inappropriately and wrongly asserts that the Commission is bound by statutory goals and objectives to use universal service funding to promote the availability of wireless service to rural areas. Western Wireless is wrong.

The Communications Act was intended to serve and promote the public interest in the pursuit of the twin objectives of competition and universal service. At its basics, the public interest means seeking to insure that in the short and long term, the public as a whole is better off, and certainly not worse off, as a result of the Federal and State Commission actions to implement the Act's provisions. The Act contains provisions, as briefly discussed in the prior section to insure the availability of spectrum to wireless providers desiring to provide service in rural areas. The Act does not, as Western Wireless infers, contain any provisions that promotes the rural entry of wireless providers

⁸ NTCA comments in WT Docket No. 02-379.

⁹ OPASTCO and Rural Telecommunications Group (RTG) comments in WT Docket 02-381, filed February 3, 2003.

¹⁰ In normal circumstances, under the Act, State Commissions review the ETC applications of wireless providers and Competitive Local Exchange Carriers (CLECs). In circumstances where State Commissions are precluded from, or do not perform this analysis, the Federal Commission performs the analysis.

such as Western Wireless, through the use of universal service funding. Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions (Federal or State) in an effort by those Commissions to artificially introduce competition into rural areas.

The Act's provisions, conveniently ignored by Western Wireless, are not to promote the interests of rural LECs, as Western Wireless asserts, but the protection of universally available service to customers in rural LEC service areas. Because of Congressional concern for the universal availability of service in high cost, sparsely populated rural areas served by rural LECs, the Act was quite specific with regard to Congress' intent regarding the public interest:

- (1) "Exemption.-Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State Commission determines...that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254...."¹¹

For larger and non-rural LECs, Congress and the Act provided no exemption from the competitive provisions of the Act. However, it is clear from the exemption that has been provided to only rural LECs that Congress' public interest concerns regarding rural LEC service areas centered on (a) Whether competitive entry is economically feasible in rural ILEC areas and (b) The effect that competitive entry in rural LEC areas would have on universal service.

- (2) "DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS...Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of a

rural telephone company and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier....Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State Commission shall find that the designation is in the public interest.”¹²

The intent of Congress here is crystal clear – an additional ETC is not required in rural LEC areas as a matter of law, but may be allowed only if adding an additional ETC is in the public interest. Again, Congress did not intend that universal service public interest issues be subservient to, or ignored by the Commissions in an effort by those Commissions to artificially introduce competition into rural areas.

These provisions of the Act neither promote nor preclude the rural entry of a wireless provider. They do not, as Western Wireless states in its comments, require or even encourage the Commission to promote wireless entry with universal service funding. Instead, the Act requires that universal service public interest concerns be fairly and thoroughly evaluated – an evaluation that Western Wireless would like to avoid.

Commissions, in concert with the Act’s provisions, when evaluating potential additional ETCs in rural LEC service areas, have an obligation and statutorily imposed duty to perform, not just a cursory analysis to determine if the potential ETC meets the Section 214 (e)(1) requirements, but an in-depth public interest analysis. This analysis should provide answers to the questions posed in Attachment 1. The Act requires at least this level of analysis to determine if designation of an additional ETC is appropriate in rural LEC service areas. The public interest analysis must, in the end, evaluate and answer these questions (and possibly other relevant information) to determine if the benefits of

¹¹ Act, Section 251 (f)(1)(A).

designating an additional ETC outweighs the costs to the public and rural LEC of the additional ETC. The Act contains absolutely no provision that requires the Commission(s) to promote, with universal service funding, wireless entry into rural markets. In fact, such promotion would be anti-competitive, would not be competitively and technological neutral and is at odds with the public interest analysis required by the Act.

**THE BARRIERS TO ENTRY DESCRIBED BY WESTERN WIRELESS DO NOT
EXIST**

(A) Western Wireless has provided no factual evidence that wireless costs are a barrier to rural entry or that its costs require universal service support.

Western Wireless states on pages 12 and 13 of its comments that the Commission and the Courts have recognized that the Commission's statutory duty is to protect efficient competition, not competitors and that the Commission should remain focused on promoting the interests of rural consumers. Western goes on to state that a rural wireless policy that served to protect a particular class of competitor would run contrary to one of the primary purposes of the Act. FW&A agrees with these comments. However, at odds with these comments, Western Wireless wants the Commission to (a) Protect and promote its entry into rural LEC areas through ETC designation (and thus universal service support), with no public interest analysis of the efficiency of its services and

¹² Act, Section 214 (e)(2).

technology and (b) Ignore any public interest analysis to determine if granting an ETC designation to Western Wireless will, in fact, promote the interests of rural consumers.

Western asserts in its comments that one of the principal obstacles it faces is the high cost of serving rural areas. To demonstrate these high costs, it provides “actual” forward-looking costs from a model (HAI Consulting, Inc. Wireless Model) that, to FW&A’s knowledge is not even available to the public for review and analysis. Western describes several “cost drivers” (spectrum, network infrastructure, interconnection back office operations and human resources and density) that cause its costs to be high in rural areas. Western claims that it provides high-quality cellular service with digital technology to customers in rural areas (page 3) and that it does not provide service to low-cost urban areas (page 4). Presumably, its high quality service and service to only “rural areas” are additional reasons why Western’s service is supposedly high cost!

In fact, Western Wireless (a) Has not provided factual and verifiable data that demonstrates that it incurs high costs and thus needs universal service support and (b) Does not provide quality services and efficient technologies and thus does not qualify for universal service support. The facts about Western Wireless’ service and technology are:

1. Western Wireless has not demonstrated a need for universal service support. It has provided no “actual” costs to demonstrate that need. The only cost support it provides is information from a model that can be manipulated to provide any cost result Western Wireless desires. The model is not, to FW&A’s knowledge, publicly available for review and analysis to validate its veracity and accuracy. Comments from

some of Western Wireless' consumers appear to belie its claims that it provides costly and modern service and technology:

“...it's the only [cellular] service in America that actually has 'party line service'. 'I've made a call to someone and have had someone else break in and start talking'.....A spokesperson for Cellular One Corporation said that equipment today would not allow for a party line to occur on a cellular phone. 'Even in the beginning of the cellular industry, it was almost impossible to have a party line on a cell phone.'....Members of the OST Tribal Council believe it is because Western Wireless is using the cheapest and most outdated equipment available.”¹³

Clearly, Western Wireless is not providing high cost technologies and services in the view of its customers. Apparently, it is attempting to provide less than adequate service and technologies in order to generate as much cash flow as possible, including cash flow from universal service funding, not to provide superior services and technologies, but to increase its bottom line.¹⁴ Providing universal service support to Western Wireless in circumstances in which it utilizes inferior technology and provides inferior service is at odds with the Act's requirements, is not in the public interest and should not be allowed by the responsible Commission. The Commission(s) should reconsider their attempts to promote uneconomic and artificial rural competitive entry by wireless carriers like Western Wireless. Such actions will harm the ability of existing providers to continue providing universal service and harm consumers.

(B) Western Wireless Faces No Barriers To Entry As A Wireless Provider Under Section 332 Of The Act. However, If Western Wireless Seeks ETC Designation, The

¹³ Western Wireless company takes heat from tribal members, an article from the Lakota Journal, by Paul Richardson, for the week of September 20 to 27, 2002, information in brackets added for clarity.

¹⁴ A Salomon Smith Barney article dated February 3, 2003, indicated that Western Wireless' USF subsidy is tracking higher than estimates – it has increased by 23 percent . The article states that this: “...further validated the opportunity for rural wireless carriers to supplement organic EBITDA with high-margin subsidies....We favor WWCA...with an opportunity to increase cash flow with USF subsidies...”

Act In Sections 214 and 254 Imposes Additional Requirements That Serve The Public Interest

The Commission(s) as required by the Act should administer a competitively neutral universal service program that provides rural consumers with comparable choices in telecommunications service to those available in urban areas and places competitors on a level playing field with incumbents. However, what Western Wireless is really asking for is an anti-competitive advantage vis-à-vis the rural LECs and other non-supported CMRS providers already operating in the rural market. Western Wireless will not provide universal service as envisioned by Congress in Sections 214 and 254 of the Act because:

- It will not be required to provide just, reasonable and affordable universal service rate levels comparable to those charged by the rural LECs or those charged in urban areas. It may charge any rate it wishes with no regulatory oversight and still qualify for support.
- It will not be required to provide quality services.
- It will not be required to provide access to advanced and/or information services.
- It will not be required to provide presubscribed access to long distance carriers.
- It will not be required to explain to any regulatory body when it decides to abandon a particular service market or area.
- It will not be required to justify its need for support.
- It will not be required to assume Carrier of Last Resort (COLR) responsibilities.

LECs are required to meet these obligations and consequently, they meet the public interest and universal service requirements of Sections 214 and 254 of the Act. However Western Wireless characterizes these public interest requirements as barriers to entry and asserts that Section 332 of the Act preempts Commission(s) from imposing these public

interest requirements.¹⁵ These requirements are not barriers to entry and Western Wireless is not shielded from providing these public interest requirements by Section 332 of the Act. Western Wireless may provide cellular service, as do other wireless carriers, to rural areas under Section 332 without rate and entry regulations. However, if Western Wireless seeks to be supported by universal service funding, additional requirements are required by the Act (Sections 214 and 254) to insure that carriers receiving funding serve the public interest. At odds with its assertions that it provides high-quality service to customers in rural areas¹⁶, without these Act requirements, certain Western Wireless' customers think otherwise:

“Service called Inadequate and shoddy...PINE RIDGE – ‘If the [Western Wireless] phone service was any worse, they might as well take it out’...the cellular service is a joke and falls short of the promises made by the company.”¹⁷

These comments make it clear that providing universal service funding, (as has occurred with Western Wireless on the Pine Ridge), without insuring that an ETC such as Western

¹⁵ Western Wireless comments, pages 19 to 22. Western Wireless is arguing that the Commissions may not regulate the basic universal service entry or rates of wireless carriers, even though those wireless carriers may receive Federal universal service funding for their basic universal services. The Commission has erroneously agreed with this miss reading of the Act in WT Docket No. 00-239, Memorandum Opinion and Order, Released August 2, 2002. This interpretation would allow a wireless carrier such as Western Wireless to receive publicly provided support with essentially no regulatory oversight. This is not what the Communications Act envisioned. The Act in Section 332(c), does not allow Commissions to regulate the rates and entry of cellular carriers. However, if these carriers seek to be eligible for universal service support, cellular carriers, like all local exchange carriers, are subject to the Act's universal service provisions in Section 214(e) and Section 254, that require all carriers, on a competitively neutral basis, to meet requirements established by Federal and State Commissions in order to receive universal service funding. Cellular carriers seeking universal service funding must not be allowed to avoid their universal service responsibilities by claiming that Section 332(c) of the Act prohibits rate and entry regulations and thus Commissions, both Federal and State, may not regulate their universal service offerings. This is a miss reading of the Act's provisions.

¹⁶ Western Wireless comments, page 3.

¹⁷ Western Wireless company takes heat from tribal members, an article from the Lakota Journal, by Paul Richardson, for the week of September 20 to 27, 2002, information in brackets added for clarity.

Wireless will meet the requirements listed above, is anti-competitive, at odds with the provisions of the Act and risks the provision of quality, universally available services at affordable rates to consumers – the basic tenets of universal service.

Insuring that all ETCs meet the Act's universal service requirements is not a barrier to entry as Western Wireless claims. Instead, those requirements serve the public interest by requiring that in trade for universal service funding, ETCs provide quality universally available universal services and access to information and advanced services at affordable rates that are comparable to rates and services in urban areas. The public interest is also served by requiring ETCs to demonstrate a cost based need¹⁸ for funding in order to insure that the funding levels they support are minimized. As Commissioner Adelstein has recently observed:

“...states [and the Commission] must make sure that the new market entrants receiving universal service meet all the obligations required by the Act. These include providing service throughout the service area and advertising its availability. They also need to consider whether the new service proposed is an enhancement or an upgrade to already existing or currently available service.

Another consideration is the effect it will have on the cost of providing service. As the fund grows, so does the level of contribution. We must ensure that the benefits that come from increasing the number of carriers we fund outweigh the burden of increasing contributions for customers. The public interest also demands that regulators seriously consider whether a market can support more than one carrier with universal service. If not, then new designations shouldn't be given as a matter of course just because it appears they meet other qualifications....we shouldn't use universal service to support artificial competition from providers [CMRS] that don't provide the same or better service than what customers already receive.”¹⁹

¹⁸ Real costs incurred in the provision of service, not made up modeled costs that are unavailable for review and subject to manipulation to produce any desired result.

¹⁹ Remarks of Commissioner Jonathan S. Adelstein to the NTCA Annual Meeting and Expo in Phoenix, Arizona on February 3, 2003, pages 3 and 4. Information in brackets added for clarity.

Respectfully submitted on behalf of the ILECs by,

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